

REESE P. HUGHES,
Plaintiff,
v.
MICHAEL J. ASTRUE, Commissioner
of Social Security,
Defendant.

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1 November 17, 2003. (Tr. 66-68, 70-72.) The applications were
2 denied initially and on reconsideration. (Tr. 35-37, 41-44.)
3 Administrative Law Judge (ALJ) Mary Bennett Reed held a hearing on
4 August 22, 2006. (Tr. 346-389, duplicated at 392-456.)
5 Plaintiff, represented by counsel, and vocational expert Tom
6 Moreland testified. On November 14, 2006, the ALJ issued a
7 decision finding that plaintiff was disabled, but substance abuse
8 materially contributed to the finding, barring eligibility. (Tr.
9 16-28.) The Appeals Council denied a request for review on
10 February 7, 2008. (Tr. 7-10.) Therefore, the ALJ's decision
11 became the final decision of the Commissioner, which is appealable
12 to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff
13 filed this action for judicial review pursuant to 42 U.S.C. §
14 405(g) on February 28, 2008. (Ct. Rec. 1, 4.)

15 **STATEMENT OF FACT**

16 The facts have been presented in the administrative hearing
17 transcript, the ALJ's decision, the briefs of both Plaintiff and
18 the Commissioner, and will only be summarized here.

19 Plaintiff was 50 years old at onset and 53 at the time of the
20 hearing. (Tr. 346.) He earned a GED and completed two years
21 of college. (Tr. 101, 347-348.) Plaintiff has worked as a
22 telephone solicitor/marketer, inbound customer service
23 representative, computer software analyst, real estate agent, and
24 sales clerk. (Tr. 111, 119.) He testified that in 2003 or 2004
25 he worked for eleven months for the ICT Group providing technical
26 cell phone support. He worked for two years as a computer user
27 support analyst. (Tr. 350, 357, 384.) Plaintiff testified that he
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1 used methamphetamine two or three times in 2002 or 2003. (Tr.
2 371.) He alleges disability as of November 17, 2003, due to
3 depression, anxiety, personality disorder NOS, diabetes,
4 alcohol/drug addiction in remission since January 2005, and
5 obesity. (Tr. 96.)

6 SEQUENTIAL EVALUATION PROCESS

7 The Social Security Act (the "Act") defines "disability"
8 as the "inability to engage in any substantial gainful activity by
9 reason of any medically determinable physical or mental impairment
10 which can be expected to result in death or which has lasted or
11 can be expected to last for a continuous period of not less than
12 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
13 Act also provides that a Plaintiff shall be determined to be under
14 a disability only if any impairments are of such severity that a
15 plaintiff is not only unable to do previous work but cannot,
16 considering plaintiff's age, education and work experiences,
17 engage in any other substantial gainful work which exists in the
18 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
19 Thus, the definition of disability consists of both medical and
20 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
21 (9th Cir. 2001).

22 The Commissioner has established a five-step sequential
23 evaluation process for determining whether a person is disabled.
24 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
25 is engaged in substantial gainful activities. If so, benefits are
26 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If
27 not, the decision maker proceeds to step two, which determines
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1 whether plaintiff has a medically severe impairment or combination
2 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
3 416.920(a)(4)(ii).

4 If plaintiff does not have a severe impairment or combination
5 of impairments, the disability claim is denied. If the impairment
6 is severe, the evaluation proceeds to the third step, which
7 compares plaintiff's impairment with a number of listed
8 impairments acknowledged by the Commissioner to be so severe as to
9 preclude substantial gainful activity. 20 C.F.R. §§
10 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P
11 App. 1. If the impairment meets or equals one of the listed
12 impairments, plaintiff is conclusively presumed to be disabled.
13 If the impairment is not one conclusively presumed to be
14 disabling, the evaluation proceeds to the fourth step, which
15 determines whether the impairment prevents plaintiff from
16 performing work which was performed in the past. If a plaintiff
17 is able to perform previous work, that Plaintiff is deemed not
18 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
19 At this step, plaintiff's residual functional capacity ("RFC")
20 assessment is considered. If plaintiff cannot perform this work,
21 the fifth and final step in the process determines whether
22 plaintiff is able to perform other work in the national economy in
23 view of plaintiff's residual functional capacity, age, education
24 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
25 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

26 The initial burden of proof rests upon plaintiff to establish
27 a *prima facie* case of entitlement to disability benefits.

1 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
2 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
3 met once plaintiff establishes that a physical or mental
4 impairment prevents the performance of previous work. The burden
5 then shifts, at step five, to the Commissioner to show that (1)
6 plaintiff can perform other substantial gainful activity and (2) a
7 "significant number of jobs exist in the national economy" which
8 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th
9 Cir. 1984).

10 Plaintiff has the burden of showing that drug and alcohol
11 addiction (DAA) is not a contributing factor material to
12 disability. *Ball v. Massanari*, 254 F. 3d 817, 823 (9th Cir.
13 2001). The Social Security Act bars payment of benefits when drug
14 addiction and/or alcoholism is a contributing factor material to a
15 disability claim. 42 U.S.C. §§ 423 (d)(2)(C) and 1382(a)(3)(J);
16 *Sousa v. Callahan*, 143 F. 3d 1240, 1245 (9th Cir. 1998). If there
17 is evidence of DAA and the individual succeeds in proving
18 disability, the Commissioner must determine whether the DAA is
19 material to the determination of disability. 20 C.F.R. §§
20 404.1535 and 416.935. If an ALJ finds that the claimant is not
21 disabled, then the claimant is not entitled to benefits and there
22 is no need to proceed with the analysis to determine whether
23 substance abuse is a contributing factor material to disability.
24 However, if the ALJ finds that the claimant is disabled, then the
25 ALJ must proceed to determine if the claimant would be disabled if
26 he or she stopped using alcohol or drugs.

27 **STANDARD OF REVIEW**
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1 Congress has provided a limited scope of judicial review of a
2 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
3 the Commissioner's decision, made through an ALJ, when the
4 determination is not based on legal error and is supported by
5 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
6 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
7 1999). "The [Commissioner's] determination that a plaintiff is
8 not disabled will be upheld if the findings of fact are supported
9 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
10 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
11 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
12 1112, 1119 n. 10 (9th Cir. 1975), but less than a preponderance.
13 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
14 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
15 573, 576 (9th Cir. 1988). Substantial evidence "means such
16 evidence as a reasonable mind might accept as adequate to support
17 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
18 (citations omitted). "[S]uch inferences and conclusions as the
19 [Commissioner] may reasonably draw from the evidence" will also be
20 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
21 On review, the Court considers the record as a whole, not just the
22 evidence supporting the decision of the Commissioner. *Weetman v.*
23 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v.*
24 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

25 It is the role of the trier of fact, not this Court, to
26 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
27 evidence supports more than one rational interpretation, the Court
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1 may not substitute its judgment for that of the Commissioner.
2 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
3 (9th Cir. 1984). Nevertheless, a decision supported by
4 substantial evidence will still be set aside if the proper legal
5 standards were not applied in weighing the evidence and making the
6 decision. *Browner v. Secretary of Health and Human Services*, 839
7 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
8 evidence to support the administrative findings, or if there is
9 conflicting evidence that will support a finding of either
10 disability or nondisability, the finding of the Commissioner is
11 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
12 1987).

13 **ALJ'S FINDINGS**

14 At the onset the ALJ found plaintiff met the insured status
15 requirements through March 30, 2008. (Tr. 18.) The ALJ found at
16 step one that plaintiff has made unsuccessful work attempts but
17 has not engaged in substantial gainful activity since onset. (Tr.
18 18-19.) At steps two and three, the ALJ found that plaintiff
19 suffers from depression, anxiety, personality disorder nos,
20 diabetes, alcohol/drug addiction in remission since January of
21 2005, and obesity, impairments that are severe. (Tr. 19.) The
22 ALJ found that, prior to February 2005, including DAA, plaintiff's
23 impairments met the requirements of Listings 12.04, 12.06, 12.08
24 and 12.09. (Tr. 20.) Plaintiff was therefore disabled when DAA
25 is included.

26 The ALJ found that if plaintiff stopped abusing substances
27 (and after February 1, 2005) the remaining limitations would cause
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1 more than a minimal impact on the plaintiff's ability to perform
2 basic work activities, but would not meet or medically equal
3 Listings 12.04, 12.06, and 12.08. (Tr. 21.) The ALJ found
4 plaintiff less than fully credible and assessed an RFC (when DAA
5 is excluded) for a limited range of unskilled light work with
6 mental functional limitations. (Tr. 21-23.)

7 At step four, relying on the VE's testimony, the ALJ found
8 that when DAA is excluded, plaintiff is unable to perform his past
9 relevant work. (Tr. 26-27.) At step five, again relying on the
10 VE, the ALJ found there are other jobs plaintiff can perform when
11 substance abuse is excluded. (Tr. 27-28.) The ALJ determined,
12 pursuant to *Bustamante*,¹ that the jobs a person with plaintiff's
13 background and limitations could perform (when not abusing
14 substances) include cleaner/housekeeper, assembly line bakery
15 worker, and small products assembly worker. (Tr. 27-28.) Because
16 plaintiff would not be disabled if he stopped abusing substances,
17 substance abuse is a contributing factor material to the
18 disability determination. (Tr. 28.) Accordingly, the ALJ found
19 that plaintiff is barred from receiving benefits under the Social
20 Security Act. (*Id.*)

21 ISSUES

22 Plaintiff contends that the Commissioner erred as a matter of
23 law by failing to properly weigh the medical evidence. (Ct. Rec.
24 19 at 14-19). The Commissioner disagrees and asks that the
25 decision be affirmed. (Ct. Rec. 17 at 7-10).

26 DISCUSSION

27 ¹*Bustamante v. Massanari*, 262 F. 3d 949 (9th Cir. 2001).
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1 **A. Weighing medical evidence**

2 In social security proceedings, the claimant must prove the
3 existence of a physical or mental impairment by providing medical
4 evidence consisting of signs, symptoms, and laboratory findings;
5 the claimant's own statement of symptoms alone will not suffice.
6 20 C.F.R. § 416.908. The effects of all symptoms must be
7 evaluated on the basis of a medically determinable impairment
8 which can be shown to be the cause of the symptoms. 20 C.F.R. §
9 416.929. Once medical evidence of an underlying impairment has
10 been shown, medical findings are not required to support the
11 alleged severity of symptoms. *Bunnell v. Sullivan*, 947, F. 2d
12 341, 345 (9th Cr. 1991).

13 A treating physician's opinion is given special weight
14 because of familiarity with the claimant and the claimant's
15 physical condition. *Fair v. Bowen*, 885 F. 2d 597, 604-05 (9th
16 Cir. 1989). However, the treating physician's opinion is not
17 "necessarily conclusive as to either a physical condition or the
18 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,
19 751 (9th Cir. 1989) (citations omitted). More weight is given to
20 a treating physician than an examining physician. *Lester v.*
21 *Cater*, 81 F.3d 821, 830 (9th Cir. 1996). Correspondingly, more
22 weight is given to the opinions of treating and examining
23 physicians than to nonexamining physicians. *Benecke v. Barnhart*,
24 379 F. 3d 587, 592 (9th Cir. 2004). If the treating or examining
25 physician's opinions are not contradicted, they can be rejected
26 only with clear and convincing reasons. *Lester*, 81 F. 3d at 830.
27 If contradicted, the ALJ may reject an opinion if he states
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1 specific, legitimate reasons that are supported by substantial
2 evidence. See *Flaten v. Secretary of Health and Human Serv.*, 44
3 F. 3d 1435, 1463 (9th Cir. 1995).

4 In addition to the testimony of a nonexamining medical
5 advisor, the ALJ must have other evidence to support a decision to
6 reject the opinion of a treating physician, such as laboratory
7 test results, contrary reports from examining physicians, and
8 testimony from the claimant that was inconsistent with the
9 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
10 751-52 (9th Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9th
11 Cir. 1995).

12 Plaintiff contends that the ALJ improperly weighed the
13 medical evidence, including the opinions of examining professional
14 Brooke Sjostrom, MS, LMHC, adopted by Mahlon Dalley, Ph.D., on
15 June 30, 2004, and January 11, 2005.

16 The ALJ notes following Ms. Sjostrom's first evaluation on
17 June 28, 2003, about seven months after onset, she diagnosed major
18 depressive disorder, recurrent, moderate, and an adjustment
19 disorder with anxiety. (Tr. 24, referring to Tr. 145.) The ALJ
20 credits Ms. Sjostrom's opinion that a major factor exacerbating
21 plaintiff's anxiety was his homelessness. The ALJ also notes Ms.
22 Sjostrom opined plaintiff would likely have temporary problems
23 sustaining employment due to his mental health issues. (*Id.*,
24 citing Tr. 145-146.) The ALJ observes that following the second
25 evaluation on January 5, 2005, Ms. Sjostrom diagnosed
26 methamphetamine dependence. (Tr. 24, referring to Tr. 154.) The
27 ALJ essentially agreed with Ms. Sjostrom that plaintiff was unable
28 to work prior to February 1, 2005, when he was actively abusing

1 substances, because the ALJ found he was disabled during this
2 period based on the Listings. (Tr. 20, 24.)

3 John Arnold, Ph. D., also evaluated plaintiff twice.
4 Plaintiff argues that the ALJ improperly discounted the severe and
5 moderate limitations assessed by Dr. Arnold on September 30,
6 2005, and the moderate limitations he assessed on April 20, 2006.
7 (Ct. Rec. 19 at 15, 18-19.) The Commissioner responds that the
8 ALJ properly discounted Dr. Arnold's opinions because they are
9 based on plaintiff's unreliable self-report, the ALJ's credibility
10 assessment is supported by the record and unchallenged, and the
11 ALJ correctly found Dr. Arnold's opinions are inadequately
12 supported by clinical findings. (Ct. Rec. 21 at 7, 9-10.)

13 To aid in weighing the conflicting medical evidence, the ALJ
14 evaluated plaintiff's credibility and found him less than fully
15 credible - an assessment not challenged on appeal. (Tr. 30-33.)
16 Credibility determinations bear on evaluations of medical evidence
17 when an ALJ is presented with conflicting medical opinions or
18 inconsistency between a claimant's subjective complaints and
19 diagnosed condition. See *Webb v. Barnhart*, 433 F. 3d 683, 688
20 (9th Cir. 2005).

21 It is the province of the ALJ to make credibility
22 determinations. *Andrews v. Shalala*, 53 F. 3d 1035, 1039 (9th Cir.
23 1995). However, the ALJ's findings must be supported by specific
24 cogent reasons. *Rashad v. Sullivan*, 903 F. 2d 1229, 1231 (9th
25 Cir. 1990). Once the claimant produces medical evidence of an
26 underlying medical impairment, the ALJ may not discredit testimony
27 as to the severity of an impairment because it is unsupported by
28 medical evidence. *Reddick v. Chater*, 157 F. 3d 715, 722 (9th Cir.

1 1998). Absent affirmative evidence of malingering, the ALJ's
2 reasons for rejecting the claimant's testimony must be "clear and
3 convincing." *Lester v. Chater*, 81 F. 3d 821, 834 (9th Cir. 1995).
4 "General findings are insufficient: rather the ALJ must identify
5 what testimony not credible and what evidence undermines the
6 claimant's complaints." *Lester*, 81 F. 3d at 834; *Dodrill v.*
7 *Shalala*, 12 F. 3d 915, 918 (9th Cir. 1993).

8 The ALJ gave several reasons for her credibility assessment.
9 As the Commissioner points out, the ALJ observed plaintiff (1)
10 gave inconsistent reports of his methamphetamine use to medical
11 professionals²; (2) engaged in daily activities inconsistent with
12 the degree of claimed impairment, including caring for
13 grandchildren, grocery shopping, washing dishes and sweeping
14 floors; and (3) inconsistently described himself as not
15 socializing well while, on his resume, he described his
16 interpersonal and communication skills as excellent. (Ct. Rec. 21
17 at 7-8, referring to Tr. 23.) Plaintiff told his counselor Martha
18 Nelson, MSW, on February 1, 2006, that he cared for his three
19 grandchildren all under age five for 8-9 hours a day while the
20 parents attended school. (Tr. 233.)

21 The ALJ's unchallenged credibility assessment is supported
22 by clear and convincing reasons, and the reasons are in turn
23 supported by the evidence.

24
25 ²The ALJ observes that in January of 2005, plaintiff
26 reported regular intravenous methamphetamine use from 2000 to
27 2004. In a June 2004 assessment, plaintiff did not disclose his
28 methamphetamine use. (Tr. 23, referring to Exhibits 1F and
2F1; see also Tr. 194: at a September 2004 medical appointment,
plaintiff described *past iv* methamphetamine use.)

1 The ALJ gave little weight to the limitations assessed by
 2 Dr. Arnold because his opinion appears to be based on plaintiff's
 3 unreliable self report, and the degree of impairment was not
 4 expected to last more than six months. (Tr. 25-26.) The ALJ's
 5 reasons are specific, legitimate and supported by the record.
 6 Although not noted by the ALJ, Dr. Arnold observed plaintiff's F
 7 scale on the MMPI-2 was sufficiently elevated to invalidate the
 8 test, suggestive of "an embellishment of psychological
 9 difficulties." (Tr. 304.) Dr. Arnold went on to opine that his
 10 report should be interpreted with "with some level of caution."
 11 (*Id.*)

12 Plaintiff challenges the ALJ's assessment of a May 17, 2005,
 13 evaluation by Kathy Jamieson Turner, MS, and endorsed by Frank
 14 Rosenkrans, Ph.D. (Ct. Rec. 14, referring to Tr. 286-293.) The
 15 ALJ notes:

16 In May of 2005, Ms. Kathy Jamieson Turner, M.S.,
 17 opined in her narrative assessment the claimant
 18 had been drug free for at least five months and
 19 that his depression and anxiety was a residual
 20 from prior substance abuse, which would indicate
 21 that functioning was still likely to improve with
 22 abstinence. No cognitive limitations were assessed
 23 although moderate social restrictions were assessed.
 24 Mental status exam was noted to be average. [The MMPI]
 25 indicated an elevated F scale. She further opined
 26 the claimant was quite capable of working and assigned
 27 the claimant a [GAF] of 65.³ Exhibit 13F/4 [Tr. 288].
 28 This assessment was adopted by Dr. Frank Rosenkrans,
 Ph.D. The undersigned finds this narrative assessment
 to be consistent with the medical record as a whole and

³A GAF (Global Assessment of Functioning) of 65 indicates
 some mild symptoms (e.g., depressed mood and mild insomnia) or
 some difficulty in social, occupational, or school functioning
 (e.g., occasional truancy, or theft within the household), but
 generally functioning pretty well, has some meaningful
 interpersonal relationships. DIAGNOSTIC AND STATISTICAL
 MANUAL OF MENTAL DISORDERS FOURTH EDITION (DSM-IV), at p. 32.

1 agrees with this narrative assessment. However, the
2 basis for the social limitations on the check-the-box
3 DSHS form is not explained in the narrative report and
4 is not accepted to the extent it is inconsistent with
5 the findings of the undersigned. Furthermore, it is
6 noted that such limitations were only expected to last
7 3 months, not meeting the durational requirements of
8 the Act.

9 (Tr. 25.)

10 The ALJ's reasons are specific, legitimate, and supported by
11 substantial evidence.

12 Plaintiff alleges that the ALJ erred when she assessed the
13 opinions of consulting psychologists Sharon Underwood, Ph.D.
14 (November 2005), and James Bailey, Ph.D. (March 7, 2006). The ALJ
15 adopted Dr. Underwood's opinion that plaintiff met the
16 requirements of Listing 12.09, substance abuse, with marked
17 limitations of daily living and maintaining concentration,
18 persistence, and pace. (Tr. 19, referring to Exhibit 4F at Tr.
19 170-183.) She agreed with Dr. Underwood that plaintiff is not
20 credible regarding his substance abuse, based on inconsistent
21 reports in Exhibits 1F and 2F. (Tr. 19.) The ALJ found, contrary
22 to Dr. Underwood's opinion, that plaintiff has "a severe mental
23 impairment" absent substance abuse; thus, to the extent the ALJ
24 disagreed with Dr. Underwood, it was in finding plaintiff more
25 impaired without DAA.

26 The ALJ notes Dr. Bailey opined that absent DAA, with respect
27 to the part B criteria of the Listings, plaintiff is moderately
28 limited in his ability to maintain social functioning. (Tr. at
29 21, referring to Exhibit 12F at Tr. 282.) The ALJ found this
30 assessment consistent with the medical record and the record as a
31 whole. (*Id.*) The ALJ properly considered and credited this

1 portion of Dr. Bailey's opinion because it is consistent with the
2 record, including the assessed GAF of 65 and moderate social
3 restrictions diagnosed by Ms. Turner and Dr. Rosenkrans.
4 Plaintiff argues the ALJ erred by failing to include Dr. Bailey's
5 "several moderate work-related limitations" in her hypothetical.
6 (Ct. Rec. 22 at 3.) The ALJ adopted most of Dr. Bailey's opinion,
7 agreeing that plaintiff can perform detailed tasks, work around
8 others but not in high levels of cooperation with them, and have
9 superficial contact with co-workers. She incorporated these
10 limitations in her hypothetical. (Tr. 24, referring to Tr. 270,
11 385, 450.) The ALJ's hypothetical did not include the "slow to
12 respond to change" limitation assessed by Dr. Bailey, nor did she
13 agree with his check box assessment of a moderate limitation in
14 the ability to maintain attention and concentration for extended
15 periods. The evidence does not support the additional limitations
16 and the check box assessment appears to contradict Dr. Bailey's
17 own written assessment. The ALJ included the limitations assessed
18 by Dr. Bailey which were supported by the evidence.

19 When she weighed the medical opinions and assessed
20 plaintiff's RFC, the ALJ considered plaintiff's credibility, the
21 medical evidence, the results of psychological testing, and the
22 opinions of examining and reviewing psychologists. The ALJ gave
23 specific and legitimate reason supported by the record for
24 rejecting some of the opinions.

25 The ALJ is responsible for reviewing the evidence and
26 resolving conflicts or ambiguities in testimony. *Magallanes v.*
27 *Bowen*, 881 F. 2d 747, 751 (9th Cir. 1989). It is the role of the
28 trier of fact, not this court, to resolve conflicts in evidence.

1 *Richardson*, 402 U.S. at 400. The court has a limited role in
2 determining whether the ALJ's decision is supported by substantial
3 evidence and may not substitute its own judgment for that of the
4 ALJ, even if it might justifiably have reached a different result
5 upon de novo review. 42 U.S.C. § 405 (g).

6 The ALJ provided clear and convincing reasons for finding
7 plaintiff's allegations not fully credible. The ALJ weighed the
8 medical evidence and found plaintiff disabled when DAA is
9 included. She found that when DAA is excluded, plaintiff is not
10 disabled and DAA is material to the disability determination. In
11 reaching these conclusions, the ALJ failed to adopt the opinions
12 of some examining professionals. Instead, she relied on the
13 opinions of other examining and consulting psychologists,
14 plaintiff's credibility, and the record as a whole.

15 The ALJ's assessment of the medical and other evidence is
16 supported by the record and free of legal error.

17 CONCLUSION

18 Having reviewed the record and the ALJ's conclusions, this
19 court finds that the ALJ's decision is free of legal error and
20 supported by substantial evidence..

21 IT IS ORDERED:

22 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 20**) is
23 **GRANTED.**

24 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 18**) is
25 **DENIED.**

26 The District Court Executive is directed to file this Order,
27 provide copies to counsel for Plaintiff and Defendant, enter
28 judgment in favor of Defendant, and **CLOSE** this file.

1 DATED this 2nd day of December, 2008.

2 s/ James P. Hutton

3 JAMES P. HUTTON
4 UNITED STATES MAGISTRATE JUDGE
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